

Remarks

Claims 35-56 are pending in the subject application. Applicants hereby elect to prosecute the invention of Group I (claims 34-39 and 46), with traverse. As the species, Applicants elect SEQ ID NO: 6 or a peptide sequence comprising between 5 and 10 amino acids, or an active mutant thereof, a fusion polypeptide or peptide thereof, or derivative thereof. Claims 35-39 and 47 read on the elected invention. By way of the amendment of this date, claim 35 has been amended and claims 40-46, 48-50 and 52-55 have been canceled. Accordingly, claims 35-39, 47, 51 and 56 are currently before the Examiner (with claims 51 and 56 standing withdrawn from consideration). Favorable consideration of the pending claims is respectfully requested.

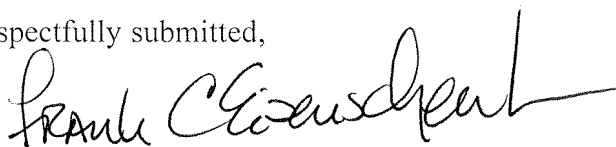
Applicants note that the Office Action indicates that the amended list of claims submitted September 30, 2004 “contains annotations regarding the numbering of the claims but corresponding annotations were not made in the numbering of the claim dependencies.” Applicants’ representative has reviewed the electronic file history of this application at the Patent Office and has identified the annotations noted in the Office Action; however, it is noted that the hand-written claim renumbering is not present in the copy of the preliminary amendment retained in the records of the undersigned and that numbering reflected in the electronic file history is incorrect. Applicants note that during the PCT phase, the original set of claims contained two claims numbered as “19” and that the claim set ended at claim 33. However, substitute sheets of the claims (under Rule 26) were presented during the PCT phase correcting this error. These substitute sheets renumbered the claims such that a total of 34 claims were present. Applicants note that the “substitute sheets” of the claims are in the Image File Wrapper with a document description of “Documents submitted with 371 Applications” dated September 30, 2004. Thus, Applicants submit that a total of 34 claims were pending in the PCT application and that the preliminary amendment filed September 30, 2004 correctly presented claims beginning with claim 35 (in accordance with 36 C.F.R. § 1.126). Applicants believe, however, that the issue raised in the Office Action is now moot in view the claim amendments presented in this response providing a new claim set (lacking the annotations noted in the Office Action).

Applicants respectfully traverse the restriction requiring the election of a single peptide. As the Examiner is aware, this application is a national stage application and is subject to the unity of invention rules for restriction. The principles of unity of invention are used to determine the types of claimed subject matter and the combinations of claims to different categories of invention that are permitted to be included in a single international or national stage patent application. The basic principle is that an application should relate to only one invention or, if there is more than one invention, that applicant would have a right to include in a single application only those inventions which are so linked as to form a single general inventive concept. Additionally, a group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature. Finally, the expression “special technical features” is defined in PCT Rule 13.2 as meaning those technical features that define a contribution which each of the inventions, considered as a whole, makes over the prior art. In this case, it is respectfully submitted that the common or corresponding special technical feature for this invention is the ability of the peptides presented in claim 35 to bind to the OX40R and have the ability to interfere with the binding of OX40L with OX40R (see, for example, page 37, lines 16-24). Accordingly, Applicants respectfully submit that the presently claimed invention complies with the requirements for unity of invention and reconsideration and withdrawal of the restriction requirement and the requirement for an election of species respectfully requested.

Applicants believe that the pending claims are in condition for allowance and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 as required by this paper to Deposit Account No. 19-0065.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frank C. Eisenschenk", with a long horizontal flourish extending to the right.

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